

By: Davis of Harris

H.B. No. 12

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to early childhood intervention and rehabilitative and  
3 habilitative services.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter A, Chapter 533, Government Code, is  
6 amended by adding Section 533.00521 to read as follows:

7 Sec. 533.00521. PRIOR AUTHORIZATION NOT REQUIRED FOR  
8 CERTAIN EARLY CHILDHOOD INTERVENTION SERVICES. (a) A managed care  
9 organization that contracts with the commission to provide health  
10 care services to recipients under the STAR Health program or the  
11 STAR Kids managed care program may not require prior authorization  
12 for the provision of early childhood intervention program services  
13 under Chapter 73, Human Resources Code, to a child eligible for the  
14 program, including services specified in the child's  
15 individualized family service plan issued by the commission under  
16 the program.

17 (b) A contract between a managed care organization and the  
18 commission for the organization to provide health care services to  
19 recipients under the STAR Health program or the STAR Kids managed  
20 care program must contain a requirement that the organization:

21 (1) proactively review and monitor recipient access  
22 and utilization of early childhood intervention services under  
23 Chapter 73, Human Resources Code; and

24 (2) demonstrate to the commission that the

1 organization is in compliance with Subsection (a), including a  
2 requirement that the organization submit quarterly reports to the  
3 commission that verify that the organization did not include a  
4 prior authorization request for early childhood intervention  
5 services under Chapter 73, Human Resources Code, as part of a  
6 medical necessity determination.

7 SECTION 2. Section 73.009(a), Human Resources Code, is  
8 amended to read as follows:

9 (a) The commission [~~department~~] shall develop and the  
10 executive commissioner shall establish policies concerning  
11 services described by this section. A child under three years of  
12 age and the child's parent, guardian, or other legally authorized  
13 representative [~~family~~] may be referred for services described by  
14 this section if the child is:

- 15 (1) identified as having a developmental delay;
- 16 (2) suspected of having a developmental delay; or
- 17 (3) considered at risk of developmental delay.

18 SECTION 3. Chapter 73, Human Resources Code, is amended by  
19 adding Sections 73.0111 and 73.012 to read as follows:

20 Sec. 73.0111. PROVIDER OMBUDSMAN. (a) In this section,  
21 "ombudsman" means the individual designated as the ombudsman for  
22 providers of services authorized under this chapter.

23 (b) The executive commissioner shall designate an ombudsman  
24 for providers of services authorized under this chapter.

25 (c) The ombudsman's office is administratively attached to  
26 the office of the ombudsman of the commission.

27 (d) The commission may use an alternate title for the

1 ombudsman in provider-directed materials if the commission  
2 determines that the alternate title would benefit providers'  
3 understanding of or access to ombudsman services.

4 (e) The ombudsman serves as a neutral party to assist  
5 providers of services authorized under this chapter in resolving  
6 issues related to providing early childhood intervention services  
7 under this chapter, including through the STAR Kids managed care  
8 program.

9 (f) The ombudsman shall:

10 (1) provide dispute and complaint resolution  
11 services;

12 (2) perform provider protection and advocacy  
13 functions;

14 (3) collect inquiry and complaint data; and

15 (4) at least annually, submit a report to the  
16 commission relating to the inquiry and complaint data collected  
17 under Subdivision (3) and make recommendations to the commission on  
18 how to improve the provision of early childhood intervention  
19 services under this chapter.

20 (g) The executive commissioner by rule shall adopt and  
21 ensure the use of procedures for the reporting, monitoring, and  
22 resolution of disputes and complaints described by Subsection (f)  
23 that are consistent with the procedures adopted and used under  
24 Medicaid.

25 Sec. 73.012. GUIDANCE ON REIMBURSEMENT METHODOLOGY FOR CASE  
26 MANAGEMENT SERVICES. (a) The executive commissioner shall request  
27 clear direction and guidance from the federal Centers for Medicare

1 and Medicaid Services on the reimbursement methodology that may be  
2 used for the provision of case management services under this  
3 chapter, including direction on allowable and unallowable costs.

4 (b) This section expires September 1, 2021.

5 SECTION 4. Subtitle B, Title 3, Human Resources Code, is  
6 amended by adding Chapter 74 to read as follows:

7 CHAPTER 74. TELE-CONNECTIVE PILOT PROGRAM

8 Sec. 74.0001. DEFINITIONS. In this chapter:

9 (1) "Commission" means the Health and Human Services  
10 Commission.

11 (2) "Eligible child" means a child who is eligible for  
12 early childhood intervention services under Chapter 73.

13 (3) "Executive commissioner" means the executive  
14 commissioner of the Health and Human Services Commission.

15 (4) "Tele-connective pilot program" means the program  
16 developed and implemented under Section 74.0002.

17 (5) "Telehealth service" and "telemedicine medical  
18 service" have the meanings assigned by Section 111.001, Occupations  
19 Code.

20 Sec. 74.0002. TELE-CONNECTIVE PILOT PROGRAM. (a) The  
21 commission shall develop and implement a pilot program to provide  
22 early childhood intervention services under Chapter 73 to eligible  
23 children through the provision of telehealth and telemedicine  
24 medical services delivered using access points established in  
25 schools and in school districts selected to participate in the  
26 program.

27 (b) In developing and implementing the tele-connective

1 pilot program, the commission shall ensure the program aligns with  
2 the provision of existing telemedicine medical services.

3 Sec. 74.0003. SCHOOL DISTRICT SELECTION. The commission in  
4 cooperation with the Texas Education Agency shall select the school  
5 districts in which to implement the tele-connective pilot program.  
6 In determining the school districts in which to implement the  
7 program, the commission and the Texas Education Agency shall:

8 (1) consider each school district in which there is:

9 (A) a low or inadequate number of service  
10 providers authorized under Chapter 73; or

11 (B) a significant risk of losing service  
12 providers authorized under Chapter 73; and

13 (2) implement the program only in school districts in  
14 which the implementation is reasonable and feasible.

15 Sec. 74.0004. PROVIDER PARTICIPATION. (a) The commission  
16 shall ensure that providers of services under Chapter 73 other than  
17 school districts are allowed to participate as providers in the  
18 tele-connective pilot program and provide services both inside and  
19 outside a school-based setting.

20 (b) The commission shall collaborate with the Texas  
21 Education Agency to establish any school-based provider access  
22 points for the program.

23 (c) The commission shall track the service hours of  
24 providers participating in the tele-connective pilot program.

25 Sec. 74.0005. ADEQUATE NETWORK OF ACCESS POINTS. (a) The  
26 commission, in consultation with the Texas Education Agency, shall  
27 ensure that an adequate number of school-based and non-school-based

1 tele-connective pilot program access points are established in a  
2 school district participating in the program. Access points may be  
3 established at schools, regional education service centers, and  
4 other entities, locations, and modes the commission determines  
5 appropriate.

6 (b) When selecting access points in which to implement the  
7 tele-connective pilot program, the commission and the Texas  
8 Education Agency shall consider the availability of existing  
9 infrastructure.

10 Sec. 74.0006. AUTOMATIC AND VOLUNTARY PARTICIPATION OF  
11 CERTAIN ELIGIBLE CHILDREN. (a) Subject to Subsection (b), the  
12 executive commissioner shall, after receiving recommendations from  
13 the advisory committee established under Section 73.004, by rule  
14 establish which eligible children will be automatically enrolled in  
15 the tele-connective pilot program.

16 (b) The parent, guardian, or other legally authorized  
17 representative of an eligible child may, at any time, elect to opt  
18 the child out of the tele-connective pilot program.

19 (c) A child who is enrolled in the tele-connective pilot  
20 program may receive early childhood intervention services through  
21 the program only to the extent the services are available and  
22 suitable. Enrollment in the tele-connective pilot program does not  
23 prevent a child from receiving early childhood intervention  
24 services in the child's home or other natural environment.

25 Sec. 74.0007. SCHOOL DISTRICT EMPLOYEE TRAINING. The Texas  
26 Education Agency shall develop a training course on the  
27 tele-connective pilot program to be given to appropriate school

1 district employees.

2 Sec. 74.0008. INITIAL SCREENING AND EVALUATION. (a) The  
3 parent, guardian, or other legally authorized representative of an  
4 eligible child must be:

5 (1) present during an initial screening or evaluation  
6 under the tele-connective pilot program; and

7 (2) given the opportunity to opt the child out of the  
8 tele-connective pilot program at the time of the child's initial  
9 screening or evaluation.

10 (b) Notwithstanding any other law, after a child is enrolled  
11 in the tele-connective pilot program, early childhood intervention  
12 services, including any initial treatment or prescription, that are  
13 delivered or issued by a physician or by a health care provider  
14 acting under the delegation or supervision of the physician or  
15 under the health care provider's license may be provided using  
16 telecommunications or other information technology.

17 Sec. 74.0009. PROVIDER REIMBURSEMENT. The executive  
18 commissioner in adopting rules governing the tele-connective pilot  
19 program shall ensure that provider reimbursement for a telehealth  
20 or telemedicine medical service is made at a rate that is comparable  
21 to the rate paid under Medicaid for the provision of the same or  
22 substantially similar services.

23 Sec. 74.0010. CONFIDENTIALITY OF INFORMATION. The  
24 commission shall ensure that the tele-connective pilot program  
25 complies with federal and state law regarding confidentiality of  
26 medical information, including the Health Insurance Portability  
27 and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and

1 the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.  
2 Section 1232g).

3 Sec. 74.0011. ACCESS POINT EVALUATION. Not later than  
4 September 1, 2020, the commission shall conduct an evaluation of  
5 the tele-connective pilot program to ensure that an adequate number  
6 of access points have been established in each school district  
7 participating in the program. This section expires January 1,  
8 2021.

9 Sec. 74.0012. REPORT. Not later than January 1, 2021, the  
10 commission shall submit an initial report to the governor, the  
11 lieutenant governor, the speaker of the house of representatives,  
12 and the presiding officers of the standing committees of the senate  
13 and house of representatives having primary jurisdiction over the  
14 early childhood intervention program authorized by Chapter 73. The  
15 report must evaluate the operation of the tele-connective pilot  
16 program and make recommendations regarding the continuation or  
17 expansion of the program.

18 Sec. 74.0013. FUNDING. The commission shall actively seek  
19 and apply for any available federal money to support the  
20 tele-connective pilot program, including federal money made  
21 available by the:

22 (1) Federal Communications Commission, including  
23 money available under the federal Rural Health Care Program;

24 (2) United States Health Resources and Services  
25 Administration's Office for the Advancement of Telehealth; and

26 (3) United States Department of Agriculture,  
27 including the Distance Learning and Telemedicine Grant Program

1 established under 7 C.F.R. Part 1734.

2 Sec. 74.0014. EXPIRATION. This chapter expires September  
3 1, 2023.

4 SECTION 5. The heading to Subchapter E, Chapter 1367,  
5 Insurance Code, is amended to read as follows:

6 SUBCHAPTER E. EARLY CHILDHOOD INTERVENTION SERVICES AND  
7 DEVELOPMENTAL DELAYS

8 SECTION 6. Section 1367.201, Insurance Code, is amended to  
9 read as follows:

10 Sec. 1367.201. DEFINITION. In this subchapter,  
11 rehabilitative and habilitative therapies and related services  
12 include:

- 13 (1) occupational therapy evaluations and services;
- 14 (2) physical therapy evaluations and services;
- 15 (3) speech therapy evaluations and services; ~~and~~
- 16 (4) dietary or nutritional evaluations;
- 17 (5) specialized skills training by a person certified  
18 as an early intervention specialist; and
- 19 (6) case management provided by a person certified as  
20 an early intervention specialist.

21 SECTION 7. Section 1367.202, Insurance Code, is amended to  
22 read as follows:

23 Sec. 1367.202. APPLICABILITY OF SUBCHAPTER. (a) This  
24 subchapter applies only to a health benefit plan that:

- 25 (1) provides benefits for medical or surgical expenses  
26 incurred as a result of a health condition, accident, or sickness,  
27 including an individual, group, blanket, or franchise insurance

1 policy or insurance agreement, a group hospital service contract,  
2 or an individual or group evidence of coverage that is offered by:

3 (A) an insurance company;

4 (B) a group hospital service corporation  
5 operating under Chapter 842;

6 (C) a fraternal benefit society operating under  
7 Chapter 885;

8 (D) a stipulated premium company operating under  
9 Chapter 884;

10 (E) a health maintenance organization operating  
11 under Chapter 843; or

12 (F) a multiple employer welfare arrangement  
13 subject to regulation under Chapter 846;

14 (2) is offered by an approved nonprofit health  
15 corporation that holds a certificate of authority under Chapter  
16 844; or

17 (3) provides health and accident coverage through a  
18 risk pool created under Chapter 172, Local Government Code,  
19 notwithstanding Section 172.014, Local Government Code, or any  
20 other law.

21 (b) Notwithstanding any other law, this subchapter also  
22 applies to a standard health benefit plan provided under Chapter  
23 1507.

24 (c) Notwithstanding any provision in Chapter 1575 or 1579 or  
25 any other law, this subchapter applies to:

26 (1) a basic plan under Chapter 1575; and

27 (2) a primary care coverage plan under Chapter 1579.

1 SECTION 8. Section 1367.203, Insurance Code, is amended to  
2 read as follows:

3 Sec. 1367.203. EXCEPTION. (a) This subchapter does not  
4 apply to:

5 (1) a plan that provides coverage:

6 (A) only for a specified disease or for another  
7 limited benefit;

8 (B) only for accidental death or dismemberment;

9 (C) for wages or payments in lieu of wages for a  
10 period during which an employee is absent from work because of  
11 sickness or injury;

12 (D) as a supplement to a liability insurance  
13 policy;

14 (E) for credit insurance;

15 (F) only for dental or vision care; or

16 (G) only for indemnity for hospital confinement;

17 (2) a small employer health benefit plan written under  
18 Chapter 1501;

19 (3) a Medicare supplemental policy as defined by  
20 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

21 (4) a workers' compensation insurance policy;

22 (5) medical payment insurance coverage provided under  
23 a motor vehicle insurance policy; or

24 (6) a long-term care insurance policy, including a  
25 nursing home fixed indemnity policy, unless the commissioner  
26 determines that the policy provides benefit coverage so  
27 comprehensive that the policy is a health benefit plan as described

1 by Section [1367.202](#).

2 (b) This subchapter does not apply to a qualified health  
3 plan to the extent that a determination is made under 45 C.F.R.  
4 Section 155.170 that:

5 (1) this subchapter requires the plan to offer  
6 benefits in addition to the essential health benefits required  
7 under 42 U.S.C. Section 18022(b); and

8 (2) this state is required to defray the cost of the  
9 benefits mandated under this subchapter.

10 SECTION 9. Section [1367.204](#), Insurance Code, is amended to  
11 read as follows:

12 Sec. 1367.204. PROVISION [~~OFFER~~] OF COVERAGE REQUIRED.

13 [~~(a)~~] A health benefit plan issuer must provide [~~offer~~] coverage  
14 that complies with this subchapter.

15 [~~(b) The individual or group policy or contract holder may~~  
16 ~~reject coverage required to be offered under this section.~~]

17 SECTION 10. Section [1367.205](#), Insurance Code, is amended by  
18 amending Subsections (a) and (b) and adding Subsection (d) to read  
19 as follows:

20 (a) A health benefit plan required to provide [~~that~~  
21 ~~provides~~] coverage for rehabilitative and habilitative therapies  
22 and related services under this subchapter may not prohibit or  
23 restrict payment for covered services provided to a child and  
24 determined to be necessary to and provided in accordance with an  
25 individualized family service plan issued by the Health and Human  
26 Services Commission [~~Interagency Council on Early Childhood~~  
27 ~~Intervention~~] under Chapter [73](#), Human Resources Code.

1 (b) Rehabilitative and habilitative therapies and related  
2 services described by Subsection (a) must be covered in the amount,  
3 duration, scope, and service setting established in the child's  
4 individualized family service plan.

5 (d) A health benefit plan prior authorization requirement,  
6 or another requirement that a service be authorized, otherwise  
7 applicable to a covered rehabilitative or habilitative therapy  
8 service or a related service is satisfied if the service is  
9 specified in a child's individualized family service plan.

10 SECTION 11. Subchapter E, Chapter 1367, Insurance Code, is  
11 amended by adding Section 1367.2055 to read as follows:

12 Sec. 1367.2055. MEDICAID PAY PARITY. A health benefit plan  
13 issuer shall reimburse a health care provider providing a  
14 rehabilitative and habilitative therapy or related service at a  
15 rate that is at least equal to the reimbursement rate the health  
16 care provider would receive for providing the same or a  
17 substantially similar service under Medicaid.

18 SECTION 12. Section 1367.206, Insurance Code, is amended to  
19 read as follows:

20 Sec. 1367.206. PROHIBITED ACTIONS. Under the coverage  
21 required to be provided [~~offered~~] under this subchapter, a health  
22 benefit plan issuer may not:

23 (1) apply the cost of rehabilitative and habilitative  
24 therapies and related services described by Section 1367.205(a) to  
25 an annual or lifetime maximum plan benefit or similar provision  
26 under the plan; or

27 (2) use the cost of rehabilitative or habilitative

1 therapies and related services described by Section 1367.205(a) as  
2 the sole justification for:

- 3 (A) increasing plan premiums; or  
4 (B) terminating the insured's or enrollee's  
5 participation in the plan.

6 SECTION 13. Subchapter A, Chapter 302, Labor Code, is  
7 amended by adding Section 302.0061 to read as follows:

8 Sec. 302.0061. WORKFORCE DEVELOPMENT GRANTS FOR PROVIDERS  
9 UNDER EARLY CHILDHOOD INTERVENTION PROGRAM. (a) In this section,  
10 "early childhood intervention program" means the program  
11 established under Chapter 73, Human Resources Code, to provide  
12 early childhood intervention services in accordance with Part C,  
13 Individuals with Disabilities Education Act (IDEA)(20 U.S.C.  
14 Section 1431 et seq.).

15 (b) The commission shall actively seek and apply for federal  
16 funding to establish a program designed to provide workforce  
17 development grants to providers participating in the early  
18 childhood intervention program for purposes of improving the  
19 provision of program services by offering providers appropriate  
20 education and training.

21 SECTION 14. (a) The Health and Human Services Commission  
22 shall request guidance from the federal Centers for Medicare and  
23 Medicaid Services or other appropriate federal agency regarding the  
24 feasibility of receiving a waiver or other authorization necessary  
25 to provide through Medicaid early childhood intervention services  
26 to children who are eligible to receive those services under  
27 Chapter 73, Human Resources Code, as amended by this Act, but who

1 are not eligible for Medicaid and do not have private health  
2 benefits coverage.

3 (b) As soon as practicable after receiving guidance under  
4 Subsection (a) of this section, the Health and Human Services  
5 Commission shall prepare a report on how best to provide to children  
6 the coverage described by that subsection. The commission shall  
7 submit the report to the governor, the lieutenant governor, the  
8 speaker of the house of representatives, and the presiding officers  
9 of the standing committees of the senate and house of  
10 representatives having primary jurisdiction over the early  
11 childhood intervention program authorized by Chapter 73, Human  
12 Resources Code, as amended by this Act.

13 SECTION 15. (a) As soon as practicable after the effective  
14 date of this Act, the Health and Human Services Commission, after  
15 consulting with the Texas Education Agency, other appropriate state  
16 agencies, and the advisory committee established under Section  
17 73.004, Human Resources Code, shall conduct a financial evaluation  
18 of the early childhood intervention services provided under Chapter  
19 73, Human Resources Code, as amended by this Act, and report on that  
20 evaluation. The report must quantify the amount by which providing  
21 early childhood intervention services in this state affects other  
22 budget strategies, including the budget strategies of school  
23 districts, regional education service centers, and other affected  
24 governmental entities.

25 (b) Not later than September 1, 2020, the Health and Human  
26 Services Commission shall submit the report prepared under  
27 Subsection (a) of this section to the governor, the lieutenant

1 governor, the speaker of the house of representatives, and the  
2 presiding officers of the standing committees of the senate and  
3 house of representatives having primary jurisdiction over the early  
4 childhood intervention program authorized by Chapter 73, Human  
5 Resources Code, as amended by this Act.

6 SECTION 16. Not later than December 1, 2019, the Health and  
7 Human Services Commission shall issue guidance to health benefit  
8 plan issuers clarifying that providers of early childhood  
9 intervention services under Chapter 73, Human Resources Code, as  
10 amended by this Act, must file claims using the national provider  
11 identifier number and Texas provider identifier number.

12 SECTION 17. Section 533.00521(b), Government Code, as added  
13 by this Act, applies to a contract entered into or renewed on or  
14 after the effective date of this Act. A contract entered into or  
15 renewed before that date is governed by the law in effect on the  
16 date the contract was entered into or renewed, and that law is  
17 continued in effect for that purpose.

18 SECTION 18. Subchapter E, Chapter 1367, Insurance Code, as  
19 amended by this Act, applies only to a health benefit plan  
20 delivered, issued for delivery, or renewed on or after January 1,  
21 2020. A health benefit plan delivered, issued for delivery, or  
22 renewed before January 1, 2020, is governed by the law as it existed  
23 immediately before the effective date of this Act, and that law is  
24 continued in effect for that purpose.

25 SECTION 19. As soon as practicable after the effective date  
26 of this Act, but not later than January 1, 2020, the Health and  
27 Human Services Commission shall develop and implement the

1 tele-connective pilot program required by Chapter 74, Human  
2 Resources Code, as added by this Act.

3         SECTION 20. If before implementing any provision of this  
4 Act a state agency determines that a waiver or authorization from a  
5 federal agency is necessary for implementation of that provision,  
6 the agency affected by the provision shall request the waiver or  
7 authorization and may delay implementing that provision until the  
8 waiver or authorization is granted.

9         SECTION 21. This Act takes effect September 1, 2019.